IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 648 of 2006

MADAN LAL
V/S
SMT.NANDU DEVI & ORS.

Mr. VINAY JAIN, for the appellant / petitioner

DR SACHIN ACHARYA, for the respondent

Date of Order : 1.5.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

The matter comes up for consideration of stay. However, in view of the fact that the controversy involved is very small at the request of the learned counsel for the parties, the matter has been finally heard.

By the impugned order Annexure-4 dt. 9.1.2006 the learned trial court proceeded to decide issue no. 5, as at the request of the learned counsel for the parties, the issue was decided as preliminary issue.

Issue no. 5 comprehended the controversy about applicability of Rajasthan Rent Control Act, 2001 to the premises in question, and consequently the trial court having no jurisdiction to hear the eviction proceedings.

The contention raised on behalf of the petitioner

is that admittedly the premises belong to Municipality, and for that the only remedy that can be availed against the petitioner is under the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964, and the proceedings under the Rajasthan Rent Control Act, 2001 are not maintainable.

On the other hand, learned counsel for the landlord submitted that may be that the premises belong to Municipality, but they were allotted to the plaintiff's predecessor Badrilal, who had inducted the petitioner as tenant, and on the question about relationship of the parties, there had been earlier litigation, which finally culminated into decision of this Court dt. 3.12.2003, which was passed in Civil Second Appeal No. 115/2003, wherein it was found, that the present petitioner is a tenant of Badrilal (predecessor in interest of the plaintiff) at a monthly rent of Rs. 400/-, and therefore, if the plaintiff wants to evict, the only remedy available is under the Rent Control Act, 2001, and not under the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964.

I have considered the submissions, and find that the shop in question has not been given to the petitioner by the Municipality, on any terms whatever, rather the shop was given to Badrilal, and Badrilal had inducted the petitioner as tenant. The relationship of Badrilal and

petitioner can no more be said to be res-integra, in view of the judgment of this Court dt. 3.12.2003. In that view of the matter, whatever be the relations between the Municipality, and the plaintiff's or their predecessor, so far as the rights of the parties to present litigating parties are concerned, in view of the earlier judgment of this Court, there does exist relationship of landlord and tenant, and therefore, if the plaintiff wants to evict the petitioner, the only remedy available is, under the Rajasthan Rent Control Act, 2001. Therefore, it cannot be said, that either that the provisions of the Act are not applicable, or that the learned trial court does not possess jurisdiction.

In my view, the learned trial court has rightly decided issue no. 5 against the petitioner, and the impugned order does not require any interference.

The net result is that the writ petition has no force, and the same is, therefore, dismissed. Parties to bear their own costs.

(N P GUPTA),J.

/Sushil/